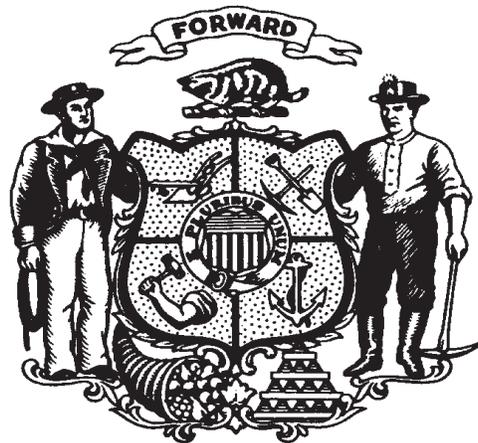


# Wisconsin Administrative Register

No. 598



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## Emergency rules now in effect

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*Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule–making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule–making procedures.*

*Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.*

*Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.*

*Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.*

*Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.*

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

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### Elections Board

Rules adopted creating **s. EIBd 1.395**, relating to the use of funds in a federal campaign committee that has been converted to a state campaign committee and relating to the use of those converted funds whose contribution to the federal committee would not have been in compliance with Wisconsin law if the contribution had been made directly to a state campaign committee.

#### Finding of Emergency

The Elections Board finds that an emergency exists in the recent change in federal law that permits the transfer of the funds in a federal candidate campaign committee's account to the candidate's state campaign committee account and finds that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

Since the Bi–Partisan Campaign Reform Act of 2002 (BICRA), transfers of funds from a federal campaign committee to a state campaign committee had not been authorized under federal law. In November, 2004, Congress amended the Federal Election Campaign Act, (H.R. 4818, s.532(3) and 532(4), to permit the transfer of a federal candidate's campaign committee's funds to the candidate's state campaign committee, if state law permitted, and subject to the state law's requirements and restrictions.

Because of Congress' action in November, 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be

transferred to a state committee, if state law permitted. Wisconsin law, under the Board's current rule, EIBd 1.39, Wis. Adm. Code, allows for conversion of federal campaign committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations.

Restricting the use of such money to that money which has been contributed to the candidate's federal committee, under circumstances in which the contribution would have complied with Wisconsin law if it had been given directly to the Wisconsin campaign committee, is found to be in the public interest.

**Publication Date:** February 3, 2005  
**Effective Date:** February 3, 2005\*  
**Expiration Date:** July 3, 2005  
**Hearing Date:** May 18, 2005

\* On February 9, 2005, the Joint Committee for Review of Administrative Rules suspended this emergency rule.

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### Health and Family Services (2) (Health, Chs. HFS 110—)

1. Rules adopted revising **ch. HFS 113**, relating to certification of first responders.

#### Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public, health, safety and welfare. The facts constituting this emergency are:

Currently, first responders are restricted in their provision of emergency medical services (EMS) to performing defibrillation. These amended rules are primarily being published by emergency order to allow first responders to also use the following 2 potentially life–saving skills:

1. Non–visualized airway, to treat patients who are either not breathing or their airway has been compromised due to trauma or other means; and
2. The administration of epinephrine, for patients who have suffered a severe allergic reaction.

The Department intends to immediately follow this emergency rule with an identical proposed permanent rulemaking order.

**Publication Date:** June 6, 2005  
**Effective Date:** June 6, 2005  
**Expiration Date:** November 3, 2005  
**Hearing Date:** June 27, 2005

2. Rules adopted amending **ss. HFS 119.07 (6) (b) to (d) and 119.15 (1) and (3)**, relating to operation of the health insurance risk–sharing plan.

#### Exemption from finding of emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2), Stats., by using emergency rulemaking procedures, except that the

Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency. These are the emergency rules. Department staff consulted with the Health Insurance Risk–Sharing Plan (HIRSP) Board of Governors on April 22, 2005 regarding the rules, as required by s. 149.20, Stats.

The State of Wisconsin in 1980 established a Health Insurance Risk–Sharing Plan (HIRSP). HIRSP provides major medical health insurance for persons who are covered under Medicare because they are disabled, persons who have tested positive for HIV, and persons who have been refused coverage or who cannot get coverage at an affordable price in the private health insurance market because of their mental or physical health conditions. Also eligible for coverage are persons who recently lost employer–sponsored insurance coverage if they meet certain criteria. According to state law, HIRSP policyholder premium rates must fund sixty percent of plan costs, except for costs associated with premium and deductible reductions. The remaining funding for HIRSP is to be provided by insurer assessments and adjustments to provider payment rates, in co–equal amounts.

HIRSP Plan 1 is for policyholders that do not have Medicare. Ninety–one percent of the 18,530 HIRSP policies in effect in February 2005 were enrolled in Plan 1. Plan 1 has Option A (\$1,000 deductible) or Option B (\$2,500 deductible). The rates for Plan 1 contained in this rulemaking order increase an average of 15.0% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 12.1%. Rate increases for individual policyholders within Plan 1 range from 7.0% to 16.8%, depending on a policyholder’s age, gender, household income, deductible and zone of residence within Wisconsin. By law, Plan 1 rate increases reflect and take into account the increase in costs associated with Plan 1 claims.

HIRSP Plan 2 is for persons eligible for Medicare because of a disability or because they become age–eligible for Medicare while enrolled in HIRSP. Plan 2 has a \$500 deductible. Nine percent of the 18,530 HIRSP policies in effect in February 2005 were enrolled in Plan 2. The rate increases for Plan 2 contained in this rulemaking order increase an average of 20.3% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 17.3%. Rate increases for individual policyholders within Plan 2 range from 11.2% to 22.2%, depending on a policyholder’s age, gender, household income and zone of residence within Wisconsin. Plan 2 premiums are set in accordance with the authority and requirements set out in s. 149.14 (5m), Stats.

**Publication Date:** June 15, 2005  
**Effective Date:** July 1, 2005  
**Expiration Date:** November 28, 2005  
**Hearing Date:** July 11, 2005

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### Insurance

Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2005.

**Finding of emergency**

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of an emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Actuarial and accounting data necessary to establish fund fees is first available in December of each year. It is not possible to complete the permanent fee rule process in time for the injured patients and families compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 2005.

The commissioner expects that the permanent rule corresponding to this emergency rule, clearinghouse No. 05–028, will be filed with the secretary of state in time to take effect October 1, 2005. Because the fund fee provisions of this rule first apply on July 1, 2005, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 17, 2005.

**Publication Date:** June 27, 2005  
**Effective Date:** July 1, 2005  
**Expiration Date:** November 28, 2005

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### Natural Resources (3) (Fish, Game, etc., Chs. NR 1—)

1. Rules adopted revising **ch. NR 10**, relating to the 2005 migratory game bird seasons.

**Finding of emergency**

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule–making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid–August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule–making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

**Publication Date:** August 31, 2005  
**Effective Date:** August 31, 2005  
**Expiration Date:** January 28, 2006  
**Hearing Date:** October 17, 2005

2. Rules adopted revising **chs. NR 46 and 47**, relating to the administration of the Managed Forest Law and the Wisconsin Forest Landowner Grant Program.

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules that govern the managed forest law. The state legislature has delegated the appropriate agencies rule–making authority to administer the managed forest law. State statute governing the managed forest law was amended on July 25, 2005 with an initial applicability date of June 1, 2005. This order is designed to bring the administrative code into conformity with the state statutes that govern the managed forest law. Normal rule–making procedures will not allow the establishment of changes necessary to continue processing petitions for managed forest law received from June 1, 2005 to July 1, 2005 (petition deadline). Failure to process these petitions will result in a delay in designation of these lands as managed forest land and a failure to meet statutory deadlines for designation.

**Publication Date:** October 4, 2005  
**Effective Date:** October 4, 2005  
**Expiration Date:** March 3, 2006  
**Hearing Date:** October 19, 2005

3. Rules were adopted amending s. NR 19.50 relating to hunter education fees.

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to regulate fees for safety education courses. The state legislature has delegated to the appropriate agencies rule making authority to regulate and administer these courses. The department must comply with state law. This order is desired to provide necessary funding for continuation of our quality hunter education program. Normal rule-making procedures will not allow the establishment of the changes by September 1. Failure to modify our rules will result in lost revenues and added expense to the hunter education program.

**Publication Date:** October 3, 2005  
**Effective Date:** October 3, 2005  
**Expiration Date:** March 2, 2006  
**Hearing Date:** October 12, 2005

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## Natural Resources (2)

### (Environmental Protection – Water Regulation, Chs. NR 300—)

1. Rules adopted revising ch. NR 326, relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.

#### Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30–day public notice. The required 30–day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption

determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water–based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision–making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

**Publication Date:** April 19, 2004  
**Effective Date:** April 19, 2004\*  
**Expiration Date:** September 16, 2004  
**Hearing Date:** May 19, 2004

\*On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended this emergency rule.

2. Rules adopted creating ch. NR 328, subch. III, relating to shore erosion control on rivers and streams.

#### Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken as exempt from a permit, or under a general permit. There are no statutory exemptions for shore protection on rivers and streams. Without emergency rules to create general permits, all shore protection projects on rivers and streams require an individual permit with an automatic 30–day public notice. The required 30–day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit.

To carry out the intention of Act 118 to speed decision–making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2005 construction season, with specific standards for shore erosion control structures on rivers and streams.

**Publication Date:** April 8, 2005  
**Effective Date:** May 1, 2005  
**Expiration Date:** September 28, 2005  
**Hearing Date:** May 16, 2005

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## Public Instruction (2)

1. Rules adopted revising ch. PI 35, relating to the private school proration process.

#### Finding of emergency

The department anticipates the program reaching the 15% cap in the 2005–06 school year. Because the department is

required to prorate the number of spaces available at each participating private school, the prorating process must be in place as soon as possible to provide adequate notice to participating schools and parents. Further, procedures must be in place prior to the beginning of the 2005–06 school year to avoid removing pupils from private schools that have lost seats after the prorating process is completed.

**Publication Date:** August 1, 2005  
**Effective Date:** August 1, 2005  
**Expiration Date:** December 29, 2005  
**Hearing Date:** August 31, 2005

- Rules adopted amending emergency rules revising **ch. PI 35**, relating to prorating under the Milwaukee Parental choice Program.

#### Finding of emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

The department anticipates the program reaching the 15% cap in the 2005–06 school year. Because the department is required to prorate the number of spaces available at each participating private school, the prorating process must be in place as soon as possible to provide adequate notice to participating schools and parents.

The rules contained in this order do not apply after December 29, 2005, unless an extension is granted under s. 227.24 (2), Stats.

**Publication Date:** August 9, 2005  
**Effective Date:** August 9, 2005  
**Expiration Date:** December 29, 2005

### Veterans Affairs (2)

- Rules adopted repealing **s. VA 2.04** and repealing and recreating **s. VA 2.02**, relating to the veterans tuition reimbursement program.

#### Exemption From Finding of emergency

The legislature has authorized the department to promulgate rules for the administration of the veterans tuition reimbursement program under the emergency rule procedure without providing evidence of the necessity of the preservation of the public peace, health, safety, or welfare at sec. 9153 (1) of 2005 Wis Act 25.

**Publication Date:** August 2, 2005  
**Effective Date:** August 2, 2005  
**Expiration Date:** December 30, 2005  
**Hearing Date:** October 21, 2005

- Rules adopted repealing and recreating **s. VA 2.01**, relating to the assistance to needy veterans program.

#### Exemption From Finding of emergency

The legislature has authorized the department to promulgate rules for the administration of the assistance to needy veterans program under the emergency rule procedure without providing evidence of the necessity of the

preservation of the public peace, health, safety, or welfare at sec. 9135 (3k) of 2005 Wis Act 25.

**Publication Date:** August 2, 2005  
**Effective Date:** August 2, 2005  
**Expiration Date:** December 30, 2005  
**Hearing Date:** October 21, 2005

### Workforce Development (Labor Standards, Chs. DWD 270–279)

Rules adopted revising **ss. DWD 274.015 and 274.03** and creating **s. DWD 274.035**, relating to overtime pay for employees performing companionship services.

#### Finding of emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

On January 21, 2004, pursuant to s. 227.26(2)(b), Stats., the Joint Committee for Review of Administrative Rules directed the Department of Workforce Development to promulgate an emergency rule regarding their overtime policy for nonmedical home care companion employees of an agency as part of ch. DWD 274.

#### Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.005, 103.02, and 227.11, Stats.

Statutes interpreted: Sections 103.01 and 103.02, Stats.

Section 103.02, Stats., provides that “no person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day, night or week, as is prejudicial to the person’s life, health, safety or welfare.” Section 103.01 (3), Stats., defines “place of employment” as “any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications office or exchange, or any express or transportation establishment or any hotel.”

Chapter DWD 274 governs hours of work and overtime. Section DWD 274.015, the applicability section of the chapter, incorporates the statutory definition of “place of employment” and limits coverage of the chapter to the places of employment delineated in s. 103.01 (3), Stats., and various governmental bodies. Section DWD 274.015 also provides that the chapter does not apply to employees employed in domestic service in a household by a household.

Section 103.02, Stats., directs that the “department shall, by rule, classify such periods of time into periods to be paid for at the rate of at least one and one-half times the regular rates.” Under s. DWD 274.03, “each employer subject to this chapter shall pay to each employee time and one-half the regular rate of pay for all hours worked in excess of 40 hours per week.” Section DWD 274.04 lists 15 types of employees who are exempt from this general rule and s. DWD 274.08 provides that the section is inapplicable to public employees.

Nonmedical home care companion employees who are employed by a third-party, commercial agency are covered by the overtime provision in s. DWD 274.03. Section DWD 274.03 applies to all employees who are subject to the chapter and not exempt under ss. DWD 274.04 or 274.08. The chapter applies to companion employees of a commercial agency because under s. DWD 274.015 a commercial agency is considered a mercantile establishment. Section DWD 270.01

(5) defines a mercantile establishment as a commercial, for–profit business. The chapter does not apply to companion employees of a nonprofit agency or a private household. In addition, none of the exemptions to the overtime section in ss. DWD 274.04 or 274.08 apply to companion employees of a commercial agency.

The Joint Committee for the Review of Administrative Rules has directed DWD to promulgate an emergency rule regarding the overtime policy for nonmedical home care companion employees of an agency. This provision is created at s. DWD 274.035 to say that employees who are employed by a mercantile establishment to perform companionship services shall be subject to the overtime pay requirement in s. DWD 274.03. “Companionship services” is defined as those services which provide fellowship, care, and protection for a person who because of advanced age, physical infirmity, or mental infirmity cannot care for his or her own needs. Such services may include general household work and work related to the care of the aged or infirm person such as meal

preparation, bed making, washing of clothes, and other similar services. The term “companionship services” does not include services relating to the care and protection of the aged or infirm person that require and are performed by trained personnel, such as registered or practical nurses.

This order also repeals and recreates the applicability of the chapter section and the overtime section to write these rules in a clearer format. There is no substantive change in these sections.

**Publication Date: March 1, 2004**

**Effective Date: March 1, 2004\***

**Expiration Date: July 29, 2004**

\* On April 28, 2004, the Joint Committee for Review of Administrative Rules suspended s. DWD 274.035 created as an emergency rule.

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## Scope statements

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### Agriculture, Trade and Consumer Protection

#### Subject

Animal health, including individual identification requirements for intrastate movement of sheep and goats and technical rule changes.

*Objective of the rule.* This rule will modify current animal health rules. Among other things, this rule may address:

- Individual identification requirements for intrastate movement of sheep.
- Individual identification requirements for intrastate movement of goats.
- Technical changes to current animal health rules.

#### Policy analysis

Intrastate movement of sheep and goats

DATCP regulates animal health, including animals in transit in Wisconsin under ss. 95.18 and 95.20, Stats. Current rules focus on the import of various species including sheep and goats, and the individual identification required for animals sent to slaughter. Current rules also regulate the intrastate movement of cattle, farm–raised deer and swine. No current rule regulates the intrastate movement of sheep and goats.

Intrastate movements of sheep and goats may have a significant impact on animal health, yet they are not covered by the same identification requirements, limiting the traceback of diseased animals and the control of disease outbreaks. This could compromise the health of the livestock industry. This rule will require official individual identification of sheep and goats for movement within Wisconsin. This requirement applies to change of ownership and movement to fairs, exhibitions, and swap meets.

#### Technical Changes

This rule may make technical changes to a number of current animal health rules.

#### Comparison with federal requirements

This rule will make Wisconsin consistent with the United States Department of Agriculture’s (USDA) sheep and goat interstate movement requirements. Currently, Wisconsin sheep and goats without official individual identification cannot move in interstate commerce without being enrolled in the scrapie flock certification program. By implementing sheep and goat identification requirements for intrastate movement Wisconsin will attain “consistent state status” with the federal government. Consistent state status allows the freer movement of Wisconsin sheep and goats in interstate commerce.

#### Entities affected by the rule

Producers of sheep and goats, markets, dealers and exhibitions that handle sheep and goats will be affected by this rule.

#### Policy alternatives

The Code of Federal Regulations, under 9 CFR 79.6, establishes specific standards for states to meet in order to maintain consistent state status. Consistent state status would

allow sheep and goats from Wisconsin to move in interstate commerce with official individual identification without being enrolled in the scrapie flock certification program. If Wisconsin does not implement the sheep and goat movement changes proposed it will become an inconsistent state and sheep and goats from Wisconsin will be required to participate in the scrapie flock certification program in order to move in interstate commerce. This would be a more costly alternative to the industry in the state.

#### Statutory alternatives

None at this time

#### Staff time required

DATCP estimates that it will use approximately 0.01 FTE staff to develop this rule. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule. Rules developed under this scope statement will be added to a hearing draft being prepared for rule changes to chs. ATCP 10, 11 and 12.

### Chiropractic Examining Board

#### Subject

The Chiropractic Examining Board (CEB) is pursuing changes to the language of s. Chir 4.05 Prohibited Practice, Chir 5 Continuing Education and initiating the creation of a new chapter on the certification process for nutritional counseling. The changes and additions to the CEB administrative rules are in response to statutory changes that will go into effect on January 1, 2006 specifying that chiropractors will be able to expand their scope of practice to provide nutritional counseling once they have completed 48 hours of board–approved postgraduate study in nutrition and paying a one–time certification fee of \$25.

#### Policy analysis

*Objective of the rule.* New administrative rules are required to amend existing administrative rules for the scope of practice of chiropractic as well as define the substance and requirements of what constitutes a board–approved 48 hour post graduate program in nutrition. Rule making to develop additional continuing education requirements may be called for as the certification envisioned by the new legislation is a lifetime certification. Additionally, the rule may include exemptions for advanced nutritional education such as a licensed chiropractor who holds a Diplomate in nutrition.

#### Policy alternatives

Currently, administrative rules do not exist for addressing or defining what should constitute a “board approved” program. Additionally, current statutes and rules define nutritional counseling – but not the “sale” of vitamins, herbs or nutritional supplements – as outside the scope of practice of chiropractic:

Wis. Stat. s. 446.01 (2) (a) (a) To examine into the fact, condition, or cause of departure from complete health and

proper condition of the human; to treat without the use of drugs as defined in s. 450.01 (10) or surgery; to counsel; to advise for the same for the restoration and preservation of health or to undertake, offer, advertise, announce or hold out in any manner to do any of the aforementioned acts, for compensation, direct or indirect or in expectation thereof;

Wis. Stat s. 450.01 (10) a “drug” is:

(a) Any substance recognized as a drug in the official U.S. pharmacopoeia and national formulary or official homeopathic pharmacopoeia of the United States or any supplement to either of them;

(b) Any substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or other conditions in persons or other animals;

(c) Any substance other than a device or food intended to affect the structure or any function of the body of persons or other animals; or any substance intended for use as a component of any article specified in pars. (a) to (c) but does not include gases or devices or articles intended for use or consumption in or for mechanical, industrial, manufacturing or scientific applications or purposes.

Wis. Admin. Code s. Chir 4.05 Prohibited Practice – Chir 4.05 (1) (d) The prescribing, dispensing, delivery or administration of drugs as defined in s. 450.01 (10), Stats., except nothing in this paragraph may be construed to prevent the sale of vitamins, herbs or nutritional supplements.

In the recently passed 2005 Wisconsin Act 25, there are new provisions for chiropractors to expand their scope of practice by completing 48 hours of *board-approved* postgraduate study in nutrition and paying a one-time certification fee of \$25. This new legislation grants a lifetime certification to practice in an expanded area. The board is amending its rules based on the new statutes and finds that there are no alternatives to the rule-making process.

#### **Statutory alternatives**

Wis. Stat. ss. 15.08 (5) (b) and (6), 227.11 (2) and 446.02 (2) (b).

#### **Comparison with federal requirements**

None.

#### **Entities affected by the rule**

Licensed chiropractors who wish to obtain a certification for nutritional counseling. Potentially licensed chiropractors who have advanced degrees such as a Diplomate in nutrition.

#### **Staff time required**

250 hours.

## **Natural Resources**

#### **Subject**

*Objective of the rule.* The development and adoption of a rule to meet the BART (Best Available Retrofit Technology) provision of the Regional Haze Regulations at 40 CFR 51.300 through 51.309 and Appendix Y to Part 51.

New regulatory requirements are anticipated to limit the emission of visibility-impairing air pollutants from certain stationary sources by requiring the affected sources to apply BART.

#### **Policy analysis**

Sections 169A and 169B of the Clean Air Act (CAA) [42 USC 7491 and 7492] contain requirements for the protection

and improvement of visibility in certain scenic areas across the United States. These areas, called “Mandatory Class I Federal Areas” or “Class I areas”, are national parks and wilderness areas, where visibility is an important air quality related value. To meet the CAA’s requirement, the U.S. Environmental Protection Agency (EPA) published the final version of the Regional Haze Regulations in the Federal Register on July 6, 2005 (70 FR 39104). These regulations along with other requirements for protection of visibility are codified at 40 CFR 51.300 through 51.309. Under the regional haze program in 40 CFR 51.308, all states, including Wisconsin, are required to revise their State Implementation Plans (SIPs) to address regional haze in Class I areas affected by emission sources in their states. One of the provisions of the program is the requirement that certain existing stationary sources emitting visibility-impairing air pollutants install and operate the Best Available Retrofit Technology (BART). The EPA has provided guidelines for identification of sources subject to BART and a set of general criteria for BART determinations. The regulations require a case-by-case BART determination to define specific emission limitations representing BART and schedules for compliance for each source subject to BART. These requirements would be part of the SIP revision that must be submitted to EPA by December 17, 2007.

To meet the BART related requirements of the Regional Haze Regulations, the Department intends to identify the sources subject to BART, notify the corresponding facilities, prepare guidance for BART determinations and require the affected facilities to perform the BART determinations. The Department believes that this concept is the most effective and practicable approach considering the time available and the scope of work involved in case-by-case BART determinations. Therefore, the Department is proposing to develop a corresponding BART rule that would need to be adopted in June 2006 to give the facilities sufficient time to perform the engineering study for BART determinations.

The requirements of the BART rule would likely be limited to the reduction of sulfur dioxide (SO<sub>2</sub>), Nitrogen oxides (NO<sub>x</sub>), and Particulate Matter (PM) emissions from sources subject to BART. The BART engineering study would define the level of emissions reduction regardless of other existing rules. However If the BART study determines that the existing controls satisfy the BART requirements, additional controls would not be required. A special case is the BART determination for the electric generating units (EGUs). The EPA leaves to states the discretion to decide whether BART determinations for EGUs are required or the participation of EGUs in the cap and trade program of CAIR (Clean Air Interstate Rule) would satisfy the BART requirement. The Department has not made this decision yet.

Since the state of Wisconsin does not have any regulations related to regional haze, there are no existing policies relevant to the proposed rule.

#### **Statutory authority**

Wisconsin is required to comply with the BART requirements for BART-affected sources under 42 USC 7491 and 7492 and 40 CFR 51.300 to 51.309. The Department has the authority to promulgate this rule under s. 285.11 (6), Wis. Stats.

#### **Staff time required**

The department estimates approximately 1,200 hours of staff time will be required to develop the BART rule.

### Comparison with federal requirements

Section 169A of CAA calls for EPA to promulgate regulations that address the visibility impairment in Class I areas. To fulfill the CAA requirements, EPA first promulgated regulations in 1980 to address the visibility impairment that is “reasonably attributable” to one or a small group of sources. These regulations affected 35 States containing Class I areas. Wisconsin was not among the affected States.

In 1999, EPA published another regulation to put in place a national regulatory program that addressed both “reasonably attributable” and “regional haze” visibility impairment. The regional haze is the visibility impairment caused by the cumulative air pollutant emissions from numerous sources over a wide geographic area. With the Regional Haze Regulations EPA called for all states to establish goals and emission reduction strategies for improving visibility in Class I areas. Since these regulations were legally challenged, EPA revised them according to the court decision and reissued them in the Federal Register on July 6, 2005 (70 FR 39104). The Department is proposing the BART rule to address the BART provision of these regulations.

Affected sources’ compliance with certain other federal requirements may constitute compliance with BART requirements. For example facilities affected by the national emission standards for hazardous air pollutants (NESHAP) must meet the maximum Achievable Control Technology (MACT). It is expected that the MACT level of control may satisfy the BART requirements regarding PM emissions.

Also as mentioned above, CAIR, another federal program, may be considered as substitute for BART for electric generating units (EGUs).

### Entities affected by the rule

The proposed BART rule would apply to major stationary sources meeting certain criteria. The Department has preliminarily identified the affected sources. They are in the following categories:

Electric generating facilities

There are approximately 10 facilities in this category. They may not be affected by the proposed BART rule, because States are provided with discretion to accept compliance with CAIR as sufficient for the BART level of control.

Pulp and paper facilities

There are approximately 7 facilities in this category

Manufacturing of chemicals including paint

There are approximately three facilities in this category

Foundries

There are approximately three facilities in this category

Wisconsin Department of Administration (Wis DOA)

There is one State facility (heating plant) for which Wis DOA is responsible.

Oil refinery

There may be one facility in this category

Lime manufacturing

There may be one facility in this category

### Natural Resources

#### Subject

*Objective of the rule.* Within the next 12 – 18 months, revise the solid waste (SW) rules (Ch. NR 520) to remove a provision which requires the Department to modify the landfill license surcharge fee if the balance in the program revenue account exceeds a specified level.

#### Policy analysis

A rule revision package was approved in 2003 which revised Ch. NR 520 to increase SW facility plan review and license fees, including the landfill license fee surcharge. As part of the rule revision package, language was added to the chapter which required that, beginning in FY05, if the account balance at the end of the previous fiscal year is greater than 8% of the expenditure level of the program revenue account authorized in s. 20.370 (2) (dg), Stats., the DNR must submit to the NR Board proposed rule revisions to modify the surcharge fee to more closely align revenues with expenditures. Eight percent of the expenditure level in the account is about \$250,000. In both FY04 and FY05, the account balance exceeded the limit by about \$150,000; however, long–term projections for the account show a projected deficit by FY07. It’s become apparent that trying to maintain the account balance at the 8% level is not practical. The Waste Program has been fiscally responsible in how they manage this account and hold annual public meetings to report on the status of the account. Interested groups are SW landfill owners (private & public) & manufacturing businesses, since the surcharge fee applies to SW disposed of at landfills.

#### Statutory authority

S. 289.61, Wis. Stats.

#### Staff time required

76 hours.

#### Comparison with federal requirements

The proposed rule/board action conforms to and does not exceed federal regulations.

### Revenue

#### Subject

Ss. Tax 1.12 and 2.04, relating to electronic funds transfer, information returns, and wage statements.

#### Entities affected by the rule

Pass–through entities that have Wisconsin income allocable to a partner, member, shareholder, or beneficiary that is a nonresident of Wisconsin. This includes partnerships, limited liability companies, tax–option corporations, estates, and trusts that are treated as pass–through entities for federal income tax purposes.

Employers required to file Form WT–7, *Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages*.

Accounting firms, payroll companies, and other entities that prepare and file Wisconsin returns for the above–listed entities.

**Comparison with federal requirements**

The department is not aware of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

**Policy analysis**

*Objective of the rule.* The objectives of the proposed rule are to:

- Create a provision specifying that income and franchise tax withholding payments of pass-through entities are required to be made by electronic funds transfer (EFT).
- Change a provision to specify that EFT payments made by automated clearing house (ACH) debit transfer may be initiated up until 4:00 p.m. on the due date of the payment.
- Create a provision specifying that the department may require pass-through entities to file returns for nonresident withholding taxes by electronic means.
- Create a provision specifying that the department may require Form WT-7, *Employers Annual Reconciliation of*

*Wisconsin Income Tax Withheld from Wages*, to be filed by electronic means.

- Update notes to list current street and mailing addresses.

Policy analysis:

Existing policies are as set forth in the rules.

In addition, new policies are being proposed, whereby the department may require that certain returns be filed by electronic means and certain payments be made by electronic funds transfer (EFT), as authorized under ss. 71.63 (3m), 71.738 (2), and 73.029, Wis. Stats.

If the rules are not changed, they will be incorrect in that they will not reflect current law, or current or proposed department policy.

**Statutory authority**

227.11 (2) (a), Stats.

**Staff time required**

The department estimates it will take approximately 100 hours to develop this rule order

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## Submittal of rules to legislative council clearinghouse

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*Please check the Bulletin of Proceedings – Administrative Rules  
for further information on a particular rule.*

### Insurance

#### Rule Submittal Date

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on September 30, 2005.

#### Subject

These changes will affect s. Ins 8.49 Appendix 1, Wis. Adm. Code, relating to small employer uniform employee application for group health insurance.

#### Agency Procedure for Promulgation

The date for the public hearing is November 8, 2005.

#### Contact Information

A copy of the proposed rule may be obtained from the web site at:

<http://oci.wi.gov/ocirules.htm>

or by contacting:

Inger Williams, Services Section

Office of the Commissioner of Insurance

(608) 264–8110

For additional information, please contact Julie E. Walsh at (608) 264–8110 or e-mail at [julie.walsh@oci.state.wi.us](mailto:julie.walsh@oci.state.wi.us) in the OCI Legal Unit.

### Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

#### Rule Submittal Date

On September 29, 2005, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Subject

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 457.03 (1) and (3), Stats.

The proposed rule–making order relates to human services internship requirements for a social worker training certificate.

#### Agency Procedure for Promulgation

A public hearing is scheduled for November 2, 2005 at 9:15 a.m. in Room 180 at 1400 East Washington Avenue, Madison, Wisconsin.

#### Contact Information

Pamela Haack, Paralegal

Office of Legal Counsel

(608) 266–0495.

[Pamela.haack@drl.state.wi.us](mailto:Pamela.haack@drl.state.wi.us)

### Natural Resources

#### Rule Submittal Date

On September 1, 2005, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending s. NR 10.01, Wis. Adm. Code.

#### Subject

The proposed rule creates a deer hunting season at Straight Lake Wilderness State Park, Polk County.

#### Agency Procedure for Promulgation

A public hearing is required and will be held October 19, 2005. The Bureau of Wildlife Management is primarily responsible for the promulgation of the rule.

#### Contact Information

Keith Warnke

Bureau of Wildlife Management

(608) 264–6023

### Natural Resources

#### Rule Submittal Date

On September 1, 2005 the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending chs. NR 10 and 45, Wis. Adm. Code.

#### Subject

The proposed rule relates to deer hunting season and permit issuance regulation changes.

#### Agency Procedure for Promulgation

Public hearings are required and will be held October 11, 12, 13, 18 and 19, 2005. The Bureau of Wildlife Management is primarily responsible for the promulgation of the rule.

#### Contact Information

Keith Warnke

Bureau of Wildlife Management

(608) 264–6023

### Natural Resources

#### Rule Submittal Date

On September 7, 2005 the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending s. NR 19.50, Wis. Adm. Code.

#### Subject

The proposed rule relates to establishing hunter education fees.

#### Agency Procedure for Promulgation

A public hearing is required and will be held October 12, 2005. The Bureau of Law Enforcement is primarily responsible for the promulgation of the rule.

**Contact Information**

Tim Lawhern  
Bureau of Law Enforcement  
(608) 266–1317

**Natural Resources****Rule Submittal Date**

On September 1, 2005, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending ss. NR 20.20 and 25.06, Wis. Adm. Code.

**Subject**

The proposed rule relates to sport fishing for yellow perch in Green Bay and its major tributaries and all other tributary streams, rivers and ditches to Green Bay and commercial fishing for yellow perch in zone 1 (Green Bay).

**Agency Procedure for Promulgation**

A public hearing is required and will be held October 12, 2005. The Bureau of fisheries Management and Habitat Protection is primarily responsible for the promulgation of the rule.

**Contact Information**

Bill Horns  
Bureau of Fisheries Management and Habitat Protection  
(608) 266–8782

**Natural Resources****Rule Submittal Date**

On September 1, 2005, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending chs. NR 46, subch. III and NR 47, subch. VII, Wis. Adm. Code.

**Subject**

The proposed rule relates to administration of the Managed Forest Law and the Wisconsin Forest Landowner Grant Program.

**Agency Procedure for Promulgation**

A public hearing will be held on October 19, 2005. The Bureau of Forest Management is primarily responsible for promulgation of the rule.

**Contact Information**

Carol Nielsen  
Bureau of Forest Management  
(608) 266–8019

**Natural Resources****Rule Submittal Date**

On September 7, 2005 the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse

amending ss. NR 102.10, 102.12 and 207.03, Wis. Adm. Code.

**Subject**

The proposed rule relates to water quality classifications in the Lake Superior basin and the related anti–degradation procedures for WPDES permits.

**Agency Procedure for Promulgation**

A public hearing is required and will be held October 12, 2005. The Bureau of Watershed Management is primarily responsible for the promulgation of the rule.

**Contact Information**

Chuck Ledin  
Bureau of Watershed Management  
(608) 266–1956

**Natural Resources****Rule Submittal Date**

On September 1, 2005 the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending s. NR 118.04, Wis. Adm. Code.

**Subject**

The proposed rule relates to management zone designations in the Lower St. Croix National Scenic Riverway.

**Agency Procedure for Promulgation**

A public hearing is required and will be held October 18, 2005. The Bureau of Watershed Management is primarily responsible for the promulgation of the rule.

**Contact Information**

Dave O'Malley  
Bureau of Watershed Management  
(608) 266–9275

**Transportation****Rule Submittal Date**

On September 15, 2005 the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending ch. Trans 276, Wis. Adm. Code.

**Subject**

The adoption of the proposed rules relates to allowing the operation of double bottoms and certain other vehicles on specified highways.

**Agency Procedure for Promulgation**

A public hearing is required and schedule for November 4, 2005. The Division of Transportation System Development, Bureau of Highway Operations, is primarily responsible for promulgation of the proposed rule.

**Contact Information**

Julie A. Johnson, Paralegal  
(608) 266–8810

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## Rule–making notices

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### Notice of Hearing

#### Insurance

[CR 05–099]

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting Section Ins 8.49 Appendix 1, Wis. Adm. Code, relating to small employer uniform employee application for group health insurance.

#### Hearing Information

Date: **November 8, 2005**

Time: 10:30 a.m., or as soon thereafter as the matter may be reached

Place: OCI, Room 227, 125 South Webster St 2<sup>nd</sup> Floor, Madison, WI

Written comments or comments submitted through the Wisconsin Administrative Rule website at: <https://adminrules.wisconsin.gov> on the proposed rule will be considered. The deadline for submitting comments is 4:00 p.m. on the 7<sup>th</sup> day after the date for the hearing stated in this Notice of Hearing. Written comments should be sent to:

Julie E. Walsh

Legal Unit – OCI Rule Comment for Rule Ins 849

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707–7873

#### Analysis Prepared by the Office of the Commissioner of Insurance (OCI)

Statutes interpreted: ss. 600.01, 628.34 (12), 635.10, Stats.

Statutory authority: ss. 601.41 (3), 601.41 (8), 635.10, 635.18 (8), Stats.

Explanation of the OCI's authority to promulgate the proposed rule under these statutes:

In accordance with s. 601.41 (8), Stats., the office of the commissioner of insurance is required to revise the uniform small employer application form at least once every two years in consultation with the life and disability advisory council. The rule was initially promulgated in 2003, and due to federal changes and a request of the life and disability advisory council the office of the commissioner of insurance proposes this rule.

Related statutes or rules:

Section 635.10, Stats., requires use of the small employer uniform employee application for group health insurance.

The plain language analysis and summary of the proposed rule:

The federal Medicare program has implemented a new drug benefit program known as Medicare Part D that first becomes effective January 1, 2006, for eligible individuals. Additionally the federal government has also modified the Health Insurance Portability and Accountability Act (HIPAA) to include the requirement of additional descriptive information for persons who after a qualifying event permits

the employee the option of a special enrollment period to understand how to obtain and apply for coverage. The proposed rule incorporates reference of Medicare Part D and amends the notification portion of the uniform application to include the additional information required by HIPAA.

Specifically, the modifications include 3 edits to the small employer uniform application for group health insurance. In section V of the application a sentence has been added in accordance with an amendment to HIPAA that informs an employee how to obtain information on electing health insurance coverage through a special election period due to a qualifying event. This information is to be provided at the time the employee waives the right to obtain health insurance through the small employer. The next two edits occur in section VI of the application to include the option for the applicant to indicate that the employee, dependent or spouse has Medicare Part D and the date the coverage began. These changes comply with the Medicare Prescription Drugs, Improvement and Modernization Act (MMA) of 2003.

During the July 2005 meeting of the life and disability advisory council, a motion was passed to request the office of the commissioner of insurance to modify the uniform application to comply with the MMA and HIPAA changes. The proposed rule incorporates the changes requested by the council in accordance with MMA and HIPAA. Failure to amend the current rule will result in insurers being unable to properly underwrite the small employer group since it would lack Medicare Part D participation information and an employee may not have sufficient information needed to make an appropriate election decision following a qualifying event.

In order to meet the deadlines required by the MMA and HIPAA the office of the commissioner of insurance is promulgating this rule both as an emergency rule and as a permanent rule concurrently. The hearing that is scheduled for November 8, 2005 will meet both hearing requirements within ss. 227.17 and 227.24 (4), Stats.

Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There is no existing or proposed federal regulation related to a uniform employee application for small employer group health insurance.

Comparison of similar rules in adjacent states as found by OCI:

Iowa: None as to the small employer uniform application for group health insurance.

Illinois: None as to the small employer uniform application for group health insurance.

Minnesota: None as to the small employer uniform application for group health insurance.

Michigan: None as to the small employer uniform application for group health insurance.

A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

The office of the commissioner of insurance reviewed the HIPAA and MMA regulations to ensure that the proposed modifications are necessary and will enable the application to

be compliant with federal requirements effective January 1, 2005.

Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:

There are no small businesses regulated by the office of the commissioner of insurance that offer the small employer group health insurance. Therefore there will be no direct effect on regulated small businesses. Further, the application is a form offered through the office of the commissioner of insurance at no cost.

If these changes may have a significant fiscal effect on the private sector, the anticipated costs to be incurred by private sector in complying with the rule:

There will be no significant fiscal effect on the private sector as the modifications are very minor and will assist in ensuring employees have information with which to make informed decisions and assist in coordinating benefits with the federal Medicare program.

#### Effect on Small Business:

This rule does not impose any additional requirements on small businesses.

There will be no state or local government fiscal effect.

#### Initial Regulatory Flexibility Analysis

This rule does not impose any additional requirements on small businesses.

#### OCI Small Business Regulatory Coordinator

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266-7843 or at email address Eileen.Mallow@oci.state.wi.us

#### Contact Person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet WEB site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Services Section, OCI, at: Inger.Williams@OCI.State.WI.US, (608) 264-8110, 125 South Webster Street - 2<sup>nd</sup> Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

### Notice of Hearing

#### Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

[CR 05-098]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 457.03 (1) and (3), Wis. Stats., and interpreting ss. 457.08 and 457.09 (1) (c) and (4m) (b), Wis. Stats., the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. MPSW 3.13 (3) (a), relating to human services internship requirements for a social worker training certificate.

#### Hearing Date, Time and Location

**Date:** November 2, 2005  
**Time:** 9:15 A.M.  
**Location:** 1400 East Washington Avenue  
 Room 180

Madison, Wisconsin

#### Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email to pamela.haack@drl.state.wi.us. Written comments must be received on or before November 4, 2005 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes interpreted: Sections 457.08 and 457.09 (1) (c) and (4m) (b), Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) and 457.03 (1) and (3), Stats.

#### Explanation of agency authority

Section MPSW 3.13 (3) (a) requires that individuals who hold a social worker training certificate complete either an internship or a year's employment before being eligible to receive their social worker certification. There is no specific requirement for the number of hours that must be completed for the internship; however, the rule does set forth certain criteria that must be met. In addition to those criteria, this proposal will ensure greater uniformity among internship programs by requiring a minimum number of hours within each one.

#### Plain language analysis

SECTION 1. Section MPSW 3.13. (3) (a) is amended to include an explicit hourly requirement for the completion of an internship which is undertaken while holding a social worker training certificate. Presently, there are two ways in which to obtain a social worker certificate. The first option requires an applicant to have obtained a bachelor's degree in social work. The second way permits an applicant who does not hold a degree in social work to complete certain "equivalency" requirements while holding a social worker training certificate. Included among those requirements is the completion of either a human services internship or one year of social work employment. The human services internship must involve direct practice with clients and must be supervised by a social worker. However, the existing rule does not specify an exact number of hours necessary to successfully complete the internship. Nevertheless, a review of 13 accredited baccalaureate social degree programs in Wisconsin all require internships of at least 400 hours or more. Because those programs include that hourly requirement and because the underlying purpose of the training certificate is to ensure that those individuals without bachelor's degrees in social work obtain training to ensure they are minimally competent to practice as social workers, this addition is being proposed. Furthermore, this addition makes the rule consistent with the 400 hours that are required for applicants who opt to pursue social work employment under a training certificate as opposed to an internship.

#### Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report

The proposed rule will have no impact on the department's funds.

#### Anticipated costs incurred by private sector

The department finds that this rule has no significant fiscal effect on the private sector.

**Effect on small business**

These proposed rules will be reviewed by the department's small business review advisory committee to determine whether they will have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling (608) 266–8608.

**Agency contact person**

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708–8935. Telephone: (608) 266–0495. Email: pamela.haack@drl.state.wi.us.

**Place where comments are to be submitted and deadline for submission**

Comments may be submitted to Pamela Haack, Paralegal,

Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708–8935; email pamela.haack@drl.state.wi.us. Comments must be received on or before November 4, 2005 to be included in the record of rule–making proceedings.

**TEXT OF RULE**

SECTION 1. MPSW 3.13 (3) (a) is amended to read:

MPSW 3.13 (3) (a) A human services internship of at least 400 hours that was part of the program leading to the degree the certificate holder specified to satisfy the requirement in s. 457.09 (1) (c) and (4m) (b), Stats., or completed while holding the training certificate, and involved direct practice with clients and that was supervised by a social worker certified under s. 457.08, Stats., and who has a bachelor's or master's degree in social work and provides direct, on–site supervision of the intern.

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## Submittal of proposed rules to the legislature

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*Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.*

### **Commerce** **(CR 04-058)**

Chs. Comm 5 and 47, relating to Petroleum Environmental Cleanup Fund awards and associated credentials.

### **Insurance** **(CR 05-066)**

Ch. Ins 50, relating to actuarial opinions and summaries and affecting small business.

### **Health and Family Services** **(CR 05-080)**

Ch. HFS 149, relating to selection and monitoring of vendors for the special supplemental food program for women, infants and children (WIC).

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## Rule orders filed with the revisor of statutes bureau

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*The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at gary.poulson@legis.state.wi.us or (608) 266-7275 for updated information on the effective dates for the listed rule orders.*

### **Elections Board (CR 05-027)**

An order affecting ch. EIBd 1, relating to the conversion of a federal campaign committee to a state campaign committee.

Effective 12-1-05.

### **Financial Institutions – Banking (CR 05-065)**

An order affecting ch. DFI-Bkg 80, relating to prohibited bases for discriminating in the extension of consumer credit.

Effective 12-1-05.

### **Natural Resources (CR 04-106)**

An order affecting chs. NR 400, 406 and 407, relating to providing the interface of the state air permitting programs and establishing “state-only” provisions in construction permits.

Effective 12-1-05.

### **Natural Resources (CR 05-005)**

An order affecting ch. NR 12, relating to the payment program for damage caused by endangered and threatened species of wildlife and gray wolves to livestock.

Effective 11-1-05.

### **Natural Resources (CR 05-018)**

An order affecting ch. NR 488, relating to revising regulations concerning activities during the salvage and transport of equipment containing refrigerants that damage the atmosphere.

Effective 12-1-05.

### **Natural Resources (CR 05-031)**

An order affecting chs. NR 1, 10, 12, 16 and 19, relating to permitting and applications, hunting, trapping, captive wildlife, agricultural damage and nuisance wildlife.

Effective 11-1-05 and 12-1-05.

### **Revenue (CR 05-063)**

An order affecting ch. Tax 18, relating to the assessment of agricultural property.

Effective 11-1-05.

### **Tourism (CR 05-070)**

An order affecting ch. Tour 1, relating to the Joint Effort Marketing Program.

Effective 12-1-05.

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# Notice of nonacquiescence

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## Tax Appeals Commission

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MERIDIAN EAU CLAIRE, LLC.

Petitioner,

NOTICE OF NONACQUIESCENCE

v.

:

Docket No. 02-M-086

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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Pursuant to sec. 73.01 (4) (e) 2., Stats., the respondent hereby gives notice that, although it is not appealing the decision or order of the Tax Appeals Commission rendered in the above-captioned matter under date of September 1, 2005, it has adopted a position of nonacquiescence in regard to that decision or order. The effect of this action is that, although the decision or order is binding on the parties for the instant case, the Commission's conclusions of law, the rationale and construction of statutes in the instant case are not binding upon or required to be followed by the respondent in other cases.

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